

No. 1-13-2398

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE INTEREST OF)
SALLY F., a minor,) Appeal from
) the Circuit Court
(PEOPLE OF THE STATE OF ILLINOIS,) of Cook County
)
Petitioner-Appellee,) No. 1-13-2398
)
v.) Honorable
) Maxwell Griffin Jr.,
VANESSA F.,) Judge Presiding.
)
Respondent-Appellant).)

PRESIDING JUSTICE HYMAN delivered the judgment of the court.
Justices Neville and Mason concurred in the judgment.

ORDER

¶ 1 *Held:* Where respondent abandoned child for four months, locking the child out, cutting off communications, and failing to participate in the child's mental health treatment, the circuit court's finding of neglect was not against the manifest weight of the evidence.

¶ 2 Respondent Vanessa F. argues that, under the facts and circumstances before us, the circuit court should have made a finding of dependency instead of a finding of neglect. Because the finding of neglect was not against the manifest weight of the evidence, we affirm.

¶ 3 BACKGROUND

¶ 4 The parties presented evidence at the adjudication hearing by stipulated testimony and the joint introduction of medical records.

¶ 5 Sally F. was born on December 8, 1996. Until the age of five, Sally was neglected by her

biological mother and abused by her mother's boyfriend, including being forced to watch the boyfriend rape her seven-year-old sister. The Department of Children and Family Services intervened, and Sally's mother relinquished custody to the State. Sally reported that she lived in at least a dozen foster homes before being adopted. Respondent Vanessa F. is a licensed foster parent and Sally's adoptive mother. Sally moved in with Ms. F at the age of 11. Sally reported that around that age, boys in the neighborhood introduced her to hard liquor and marijuana. Ms. F. is a single mother and has two other children, including an infant foster child.

¶ 6 After the adoption, Sally's struggled with mental illness and was frequently hospitalized. On November 12, 2010, at the age of 13, Ingalls Hospital admitted Sally for auditory hallucinations, and depression. She was diagnosed with bipolar disorder. The staff noted that Sally had not been compliant with her medication, had attempted suicide, and had a history of running away from home. She was discharged 10 days later with referrals for medication management and outpatient counseling. On February 16, 2011, Sally returned to Ingalls for treatment of depression. She was discharged at the end of the month with the same referrals.

¶ 7 The following June, Sally left home and slept either in a park or at a friend's house. The next morning, school officials called paramedics and reported that Sally was "exhibiting bizarre behavior." This time, Sally was admitted to Riveredge Hospital for "suicidal ideations." Riveredge staff set up family therapy to which Sally responded that Ms. F. "wasn't going to like it because she told me to stay here longer." Sally participated in family therapy where they discussed Sally's discharge; Ms. F. attended by telephone. The therapy notes show that Ms. F. expressed concern with Sally's running away from home, staying out all night, hostility towards

her family, and acting out sexually. During therapy, Sally admitted that she had stayed out at the park and then at an older boy's home, and had sex with boys she met in the park. Sally assured Ms. F. that she would not do those things again. Further therapy notes from June 9, 2011 reveal:

"[Ms. F.] described [Sally's] behaviors as oppositional, angry, cursing at mom 'when she does not get her way.' [Sally] verbalized under her breath that mom 'does not want me and wants to get rid of me.' Encouraged [Sally] to speak up about this. [Ms. F.] responded by asking about how she can work on getting [Sally] out of her home. Therapist took the phone off speaker and conversed with [Ms. F.] about this, explaining the importance of being stable and support of [Sally], rather than using this as a threat to modify [Sally's] behaviors."

Throughout the family sessions, the staff worked with Sally to stabilize her mood and teach her coping skills. With improvements in her mood and behavior, Riveredge discharged Sally on June 22, 2011. As a follow up, Ms. F. took Sally to see a psychiatrist at Aunt Martha's in July 2011.

¶ 8 Sally was again hospitalized on October 3, 2011 at Riveredge for "suicidal ideations, bizarre ideations, and erratic behavior." Hospital notes reveal that, when consulted about family therapy, Ms. F. stated that it "may not be necessary as the patient did not want to return home." Ms. F. believed that Sally's medications were not working. In therapy, Sally stated that she felt unwanted at home, and overwhelmed with Ms. F. "always being on her." She also admitted she tried to push Ms. F. but could not due to Ms. F.'s size compared to hers. Sally also claimed that Ms. F. put her in a boot camp and would laugh at her when she was "beat up" there. Riveredge discharged Sally on October 22, 2011, and her discharge papers reveal Sally's diagnoses as

"bipolar disorder, manic phase with psychosis." Ms. F. tried to obtain services for Sally from Mercy Home for Boys and Girls, but Mercy Home turned them away because of Sally's behavioral issues and frequent running away from home.

¶ 9 On January 5, 2012, while at home, Sally grabbed a knife and threatened to kill herself, and asked her younger sister to push her down the stairs. As a result, Sally returned to Ingalls for observation. Sally told her therapist at Ingalls that she felt like she was treated unfairly at home and did not want to go back. Sally reported that she did not feel like she belonged with her family, because she was not like them, "They're nice and people say I'm evil." After some improvement, the hospital discharged Sally on January 25, 2012 with several referrals.

¶ 10 Ms. F. requested help from the Thornton Township Youth Committee Service program, and a worker came to her house on May 14, 2011. In the worker's notes, he reported that Sally had two arrests for domestic violence against her mother since 2010. The worker also noted that "[f]amily appears to have problems communicating. The mother does not elaborate on much, just answers whata [sic] she was asked." The worker referred Sally to family and individual counseling, anger management, and the National Youth Project Using Minibikes, a behavior modification program. Sally dropped out of the programs, and the worker's attempts to contact Ms. F. throughout July and August 2012 went unanswered.

¶ 11 Grand Prairie Services assessed Sally and noted that she abused marijuana and alcohol, stayed out past curfew, and often ran away from home. On July 12, 2012, Sally was hospitalized at Ingalls and transferred to Roseland Community Hospital. Staff was unable to reach Ms. F. until July 16. In that telephone conversation, the staff asked Ms. F. about Sally's discharge plans,

which upset Ms. F. For untold reasons, she refused to consent to Roseland administering certain medication to Sally. A Roseland psychiatrist reported that Sally was unable to get in touch with Ms. F. since her admission, and that Sally felt "angry and upset that her mother is not responding." Sally did not want to return home. Staff attempted to schedule a family therapy session with Ms. F. and Sally, and noted:

"[Ms. F.] asked how long would session be and why she had to come in for it. [I] explained to [Ms. F.] the process on inpatient unit. [I] explained that [Sally's] behavior would be discussed during the family session. [Ms. F.] stated that [Sally's] issue is not a family issue and [I] need[] to be talking to [Sally] because she is 15 years old. [Ms. F.] stated that she cannot stop patient from drinking, drugging, and having sex. *** [I] explained that a family session is important for [Sally's] treatment. [Ms. F.] stated that she did not want to participate in family session."

The hospital discharged Sally on July 22, 2012, and referred her to the South Suburban Council for alcohol and drug assessment. On July 27, 2012, Ms. F. took Sally to the South Suburban Council to curb Sally's use of alcohol and marijuana. The council found that Sally needed intensive outpatient services.

¶ 12 Ms. F. stated that Sally had been violent and threatening towards her and her two other children in the past. With Sally home, Ms. F. feared for her own safety and the safety of her other children. In August 2012, Ms. F. applied for an individual-care grant for Sally, which was denied. The grant, if allowed, would have helped defray the cost of residential treatment for Sally, but no treater had recommended such intensive care.

¶ 13 On August 22, 2012, Sally was involved in a physical altercation with Ms. F. Sally was placed under arrest for property damage and also attacked a police officer. Sally reported that Ms. F. kicked her out, and that she had tried to kick down the door to get back in the house. Sally was admitted to Hartgrove Hospital the same day. Her attending psychiatrist, Dr. David Benson, found that though Sally had a potential to harm others, she was cooperative during her hospitalization and did not appear agitated or aggressive. Benson estimated that Sally would be discharged in five or six days. Other hospital staff noted that Sally had a potential for aggression. Benson stated that Sally did exhibit feelings of depression. Hospital staff confirmed this, noting that Sally seemed withdrawn and isolated.

¶ 14 Jeanette Demarshiman, Hartgrove social worker, developed a treatment plan for Sally. The plan included weekly family therapy with Ms. F. Demarshiman contacted Ms. F on August 26, 2012, to set up a therapy session, and Ms. F. stated that she did not want to participate in family therapy. Hospital records indicated that Ms. F. would not get involved in Sally's treatment and refused to speak to Sally. On August 30, 2012, the hospital contacted the Department of Children and Family Services to report a possible "lock out." ("A lockout is when a parent removes a child from the home, locks the door and does not allow the child back into the home." *In re J.S.*, 2012 IL App (1st) 120615, ¶ 5.) Sharon Smith, an investigator with DCFS, stated that Ms. F. refused to allow Sally to return home, even though Sally was ready to be discharged.

¶ 15 On September 6, 2012, according to Demarshiman, Ms. F. refused to let Sally return home. Demarshiman also asked Ms. F. to deliver some clothes to Sally, as she only had a pair of capri pants, a t-shirt, shoes, socks, and undergarments. Therapist notes from September 9 indicate

that, while Ms. F. verbally consented to Sally's therapy, the required written consent had not been received. Sally was ready for discharge on September 13, 2012, and again Ms. F. refused to let Sally return home. On September 20, 2012, Dr. Benson told DCFS investigator Smith that Sally had threatened bodily harm to Ms. F. and the other children, and should not return home. Benson believed Sally could be discharged to a traditional foster home. He did not recommend Sally for residential or a more restrictive treatment. Smith discussed the matter with Ms. F. on October 2, 2012. Ms. F. told Smith that she was afraid for her and her other children's lives because Sally had threatened to harm them. Smith found no other family members willing or able to care for Sally at that time.

¶ 16 Ms. F. consented to Sally's medication on October 11, 2012 . The doctor's notes reveal that Ms. F. "is rather lacking in empathy with this girl, blames her for many issues that are either exaggerated or understandable given the patient's past history." Dr. Benson interpreted Sally's sadness and distance as results of Ms. F.'s rejection. Around this time, Ms. F. finally shipped clothes to Sally at the hospital. On October 18, 2012, Sally attempted suicide. In Sally's words, she "wanted to become a ghost" and could not take staying in the hospital any longer. On October 29, 2012, Sally was taken into protective custody. By then, Demarshiman stated, Ms. F. still did not participate in family therapy, or even contact Sally.

¶ 17 On October 31, 2012, the circuit court held a temporary custody hearing on the State's petition for adjudication of wardship, which sought a finding of no-fault dependency. The court found probable cause existed to believe that Sally was abused, neglected, or dependant. The court also removed Sally from Ms. F.'s home, granting temporary custody the DCFS guardianship

administrator. On January 14, 2013, the State amended its petition to allege that Sally was neglected due to lack of necessary care and an injurious environment. Hospital records indicate that, in December 2012 on multiple occasions, Sally scratched her face with her nail, and tried to hide a knife in her room to harm herself. Sally remained hospitalized until December 21, 2012, when an appropriate placement was found and she was discharged.

¶ 18 On January 14, 2013, the State amended its petition for adjudication of wardship, alleging that Sally was neglected (i) in that she was not receiving the proper support, education, or medical care, and (ii) in that her environment was injurious to her welfare. In support, the State alleged that Ms. F. refused to allow Sally to return home from the hospital in September 2012, and failed to create a care plan for Sally. The State further alleged that there were no relatives willing to care for Sally.

¶ 19 The trial court accepted and reviewed the stipulations and Sally's medical records. The court found that Ms. F.'s refusal to allow Sally to return home showed a lack of concern for Sally's safety and well-being, and made a finding of neglect. At the dispositional hearing, after hearing testimony from Sally's caseworker, the court adjudged Sally a ward of the court.

¶ 20 STANDARD OF REVIEW

¶ 21 We will not reverse the circuit court's finding of neglect unless it is against the manifest weight of the evidence, where the opposite conclusion is clearly evident from the record. *In re Diamond*, 2011 IL App (1st) 111184, ¶ 20. The State bears the burden of proving the allegations of neglect or dependency by a preponderance of the evidence. *In re L.H.*, 384 Ill. App. 3d 836, 841 (2008).

¶ 22

ANALYSIS

¶ 23 Ms. F. only challenges the trial court's adjudication order finding Sally was a neglected minor, and not the results of the dispositional order. Thus, our review is thus limited to the issue of whether, under the facts and circumstances, Ms. F. neglected Sally or whether a finding of no-fault dependency was called for. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008).

¶ 24 "Neglect" generally means the " 'failure to exercise the care that circumstances justly demand and includes both willful and unintentional disregard of parental duties. [Citation.] The term is not a 'fixed and measured meaning' and it takes its content from specific circumstances of each case. [Citation.] Accordingly, cases involving an adjudication of neglect and wardship are sui generis, and each case must be decided on the basis of its own unique circumstances. [Citation.] " *Diamond M.*, 2011 IL App (1st) 111184, ¶ 21 (quoting *In re Christopher S.*, 364 Ill. App. 3d 76, 88 (2006)). A dependent minor includes one "who is without proper medical or other remedial care recognized under State law or other care necessary for his or her well-being through no fault, neglect or lack of concern by his parents, guardian or custodian." 705 ILCS 405/2-4(1)(c).

¶ 25 Ms. F. first argues that the trial court's ruling at the adjudication hearing—that Ms. F. could have done more to actively help Sally—failed to give adequate weight to Sally's medical history, her escalating condition, and the threats to Ms. F. and her family's safety. We disagree.

¶ 26 The evidence show that Ms. F. refused to provide shelter or assist in Sally's healing process after she was admitted to Hartgrove in August 2012. Demarshiman, Smith, and Dr. Benson testified that Ms. F. refused to participate in family therapy sessions, failed to contact

Sally, and eventually refused to allow Sally to return home. While Sally's promiscuity and violent behavior bothered Ms. F., these are not reasons to abandon a child. It was Ms. F.'s responsibility to do everything she can to shelter, care for, and provide for Sally. Ms. F.'s years of struggling to care for Sally from 2010 and 2012 do not excuse abandoning and cutting off her child for four months. Ms. F.'s actions indicate a lack of parental concern for Sally at the end of 2012.

¶ 27 Ms. F. argues that her concerns about Sally returning home are understandable based on Sally's violent behavior and threats towards Ms. F. and her other children. She claims "[s]he balanced their needs and her own safety while trying to still help for [sic] Sally." Sally's potential for violent behavior and her threats towards her mother and siblings might excuse Ms. F's locking her out. Indeed, Dr. Benson believed that Sally was a threat to herself and her family, and should not return home. But that does not excuse Ms. F's failure to participate in Sally's healing process or find an alternative placement for her. Even if parents live in abject fear of their child, they do not have the option of not showing up to support the child's healing. Ms. F. failed to participate in family therapy with Sally at the end of 2012, failed to authorize certain medical treatments, failed to return hospital phone calls, and failed to timely provide Sally with clothes during her stay at Hartgrove. None of the foregoing posed any threat to the safety and well-being of Ms. F. or her other children and they were enormously important to Sally's treatment. This "cutting off" had a severe, negative effect on Sally's healing: she became depressed and attempted suicide while hospitalized. Ms. F. failure to cooperate in Sally's care for four months constitutes a shirking of parental duties. Accordingly, the finding of neglect was not against the manifest weight of the evidence.

¶ 28 Ms. F. next analogizes this case to *In re Christopher S.*, 364 Ill. App. 3d 76 (2006). Christopher was just as troubled and violent as Sally, if not more so, often lashing out at his mother. *Id.* at 80. After a lockout, the trial court made a finding of no-fault dependency, and the appellate court affirmed. *Id.* at 84 & 90. The analysis turned on Christopher's parents' devotion to their son, and their willingness to do everything in their power to promote his healing, even after locking him out, including family therapy, calls and visits, and seeking an alternative placement. *Id.* at 88-89. This sharply contrasts Ms. F.'s actions at the end of 2012.

¶ 29 Ms. F. also argues we should follow *In re S.W.*, 342 Ill. App. 3d 445 (2003). S.W. was troubled and violent, and had even tried to kill her mother. *Id.* at 447-49. As in *Christopher S.*, after a lockout, the trial court made a finding of no-fault dependency, and the appellate court affirmed. *Id.* at 450, 453. This court noted that S.W. suffered from a long list of severe mental disorders, and that S.W.'s mother did not have the ability to care for S.W. Unlike the parents in *S.W.*, no evidence established Ms. F.'s inability to care for Sally, only that Ms. F. affirmatively stopped providing and caring for Sally in the last four months of 2012. We, therefore, find *S.W.* distinguishable.

¶ 30 As this court has observed:

"there is an important procedural difference that should be highlighted. In both *Christopher S.* and *S.W.*, the circuit court entered findings of dependency, which were affirmed on appeal. In contrast, in this case the circuit court entered a finding of neglect. As we stated above, we review the circuit court's finding at an adjudicatory hearing only to determine whether it is against the manifest weight of the evidence. [Citation.] This is

a relatively deferential standard of review that 'is grounded in the reality that the circuit court is in a superior position to observe the demeanor of the witnesses, determine and weigh their credibility, and resolve conflicts in their testimony.' [Citation.]" *In re Diamond M.*, 2011 IL App (1st) 111184, ¶ 31.

¶ 31 Despite Sally's behavior towards Ms. F., the record indicates that Ms. F. failed to even try to provide Sally with a place to live (even if not in Ms. F.'s home), and that she showed a lack of concern for Sally's health and well-being by cutting her off, locking her out, and not participating in her healing during the last four months of 2012.

¶ 32 CONCLUSION

¶ 33 The circuit court's finding of neglect was not against the manifest weight of the evidence, and a finding of dependency is not clearly evident from the record.

¶ 34 Affirmed.